



STATE OF NEW JERSEY

In the Matter of Police Lieutenant
(PM1947W), Ewing

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-3803

Examination Appeal

ISSUED: September 6, 2018 (JH)

The Township of Ewing, represented by Maeve E. Cannon, Esq., appeals the determination by the Division of Agency Services (Agency Services) which denied its request to reduce the one-year service requirement in the title of Police Sergeant to the completion of the working test period for the promotional examination for Police Lieutenant (PM1947W), Ewing.

By way of background, the subject promotional examination was announced with a closing date of September 30, 2018 and was open to employees in the competitive division who possessed an aggregate of one year of continuous permanent service in the Police Sergeant title. It is noted that four individuals were admitted the subject exam which is tentatively scheduled to be administered in October 2018.¹

By letter dated May 17, 2018, the appointing authority petitioned Agency Services for a reduction of the one-year service requirement to the completion of the working test period. In this regard, Ewing maintained that currently, it “will have a promotional list that will have, at most four, and possibly fewer, Lieutenant candidates on it, while being faced with the potential vacancy of some six or more lieutenant and senior positions within the next year.” In this regard, the Township

¹ A review of the record finds that Christopher Boller, Michael Flynn, William Lardieri, Charles Morgan, Carlos Santiago and Glenn Tettermer submitted applications for the subject test. It is noted that the Division of Agency Services found that Boller and Tettermer, who were appointed effective April 30, 2018 and June 4, 2018, respectively, to the Police Sergeant title, were ineligible for the subject promotional examination.

indicates that in May 2018, Lieutenant Frank Labaw was promoted to Captain but as “Ewing does not currently have a lieutenant’s list[,] no replacement was promoted to Lieutenant . . .;” Captain Rocco Maruca “has indicated that he is strongly considering retirement this year” and “it is certain that he will retire before the termination of the next lieutenant’s list in 2020-21;” Lieutenant Jeffrey Caldwell “submitted his retirement paperwork on May 16, 2018 for an effective retirement date of August 1, 2018;” Lieutenant Michael Delahanty “indicated that he will now retire on January 1, 2019 and will begin using his accrued time off beginning in October of 2018;” Lieutenant Karl Bartkowski has indicated that he is contemplating retirement as of February 1, 2019;” Lieutenant Daniel McGuire has indicated that he will likely retire on September 1, 2021;” and Chief John Stemler “is contemplating retirement as of February 1, 2019.” The Township further presented that Robert Litz and Larry Cabell “could and should take the lieutenant’s test but for the fact that they will not have the full one year of continuous service in the sergeant’s position . . .” as they were appointed to Police Sergeant effective December 5, 2017. The Township notes that Litz “has been an acting sergeant in the detective bureau since July 5, 2017, when another sergeant in the detective bureau was placed on long term suspension and ultimately terminated” and Caldwell “has served as acting sergeant in October and November 2016 . . . He managed the supervisory and administrative tasks of this position while also handling a dual purpose K9 (narcotics/patrol), which is a first for Ewing.” Agency Services, by letter dated June 4, 2018, denied this request noting, in part, that the Township had two genuine vacancies, *i.e.*, the vacancy created by the appointment of Labaw to Captain and Caldwell’s retirement effective August 1, 2018. However, it found that “while other police personnel may be contemplating retirement, it is tentative at best” and these speculative retirements are not a valid basis to waive the year in grade requirement. Agency Services further found that the current number of applicants would “likely result in a complete (three or more) eligible list for the Township to consider when selecting replacements for Captain Labaw and Lieutenant Caldwell.”

On appeal, the Township argues that it “will have a promotional list that will have, at most four, and possibly fewer, Lieutenant candidates on it, while being faced with the potential vacancy of some six or more lieutenant and senior positions within the next year, with three occurring immediately.” The Township maintains that “the proposed retirements are anything but speculation, and are instead the product of ongoing discussions between the captain and the intended retirees. Those discussions have created a reasonable expectation that at least four vacancies, if not more, will arise during the course of the list, thereby exceeding the potential eligibles.” In this regard, the Township asserts that “as of June 28, 2018[,] there will be three confirmed pending promotional opportunities to the Lieutenant position[, *i.e.*, Labaw, Caldwell and Delahanty]. The Township . . . is aware that none of th[e] remaining individuals have submitted their formal paperwork for retirement as of yet. However, all of these officers . . . have had candid

conversations with the Chief and the Township administration regarding their retirement intentions.” The Township further emphasizes that Litz and Caldwell “are experienced officers with significant and successful acting experience in the Sergeants position prior to their promotions in December 2017.” In support of its appeal, the Township submits additional documentation including a certification dated June 26, 2018 from Chief Stemler; an email sent June 17, 2018 from Delahanty to Stemler in which Delahanty indicates that he will submit his retirement paperwork on June 28, 2018 for an effective retirement date of December 31, 2018; and an email sent June 28, 2018 from the Division of Pensions and Benefits confirming that it received an application for retirement from Delahanty.

CONCLUSION

N.J.A.C. 4A:4-2.6(a)1 provides that applicants for promotional examinations shall have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. *N.J.A.C.* 4A:4-2.6(g) provides:

The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;
2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or
3. Other valid reasons.

The Civil Service Commission (Commission) is responsible for the review and determination of requests to reduce the one-year service requirement to the completion of the working test period. Such requests are at the discretion of the appointing authority. While an appointing authority may initiate a request, this request may be denied by the Commission if it does not meet the criteria pursuant to *N.J.A.C.* 4A:4-2.6(g). In the instant matter, initially, Agency Services correctly determined that there did not appear to be a basis at the time of Ewing’s request to waive the one year of continuous permanent service in the title of Police Sergeant to completion of the working test period. However, since that time, the record indicates that Delahanty has filed for retirement effective December 31, 2018.

Pursuant to *N.J.A.C.* 4A:4-4.2(c)2, it is beneficial to insure that a full and complete roster of eligibles is in existence for the three year duration of the list. In this regard, it is noted that, in general, not all applicants who file and compete

actually pass the necessary examination. In the present matter, even assuming that all four candidates pass the test, if the appointing authority needs to fill more than two vacancies over the three year duration of the list, the PM1947W list will not provide a complete list of eligibles. As indicated above, Ewing has three Police Lieutenant vacancies, at a minimum, to fill.

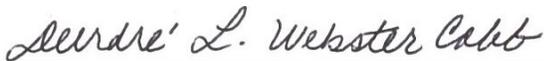
A basic tenet of the Civil Service Act and its implementing rules is that appointments and promotions are awarded based on merit and fitness which is measured by competitive examinations. Increasing the applicant pool does not negatively impact on those applicants who were originally eligible without waiving the time in-grade requirement. Moreover, the waiving of the time in grade requirement in this particular instance gives the appointing authority the greatest chance of having a complete eligible roster after the completion of the required examination. Accordingly, under these circumstances, it is appropriate to reduce the one-year service requirement for the Police Lieutenant (PM1947W), Ewing Township, examination to the completion of the working test period for Police Sergeant. *See e.g., In the Matter of John Lenge, Deputy Police Chief (PM3587G), Middletown Township, Docket No. A-1060-06T5 (App. Div. October 19, 2007).*

ORDER

Therefore, it is ordered that this request be granted and the promotional announcement for Police Lieutenant (PM1947W), Ewing, be amended to the completion of the working test period.²

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 5TH DAY OF SEPTEMBER, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

² As noted previously, Boller and Tettermer previously filed applications and thus, do not need to submit new applications. However, their applications should be re-reviewed for eligibility.

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